LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS

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FISCAL IMPACT STATEMENT

LS 7514 **NOTE PREPARED:** Jan 24, 2003
BILL NUMBER: HB 1788 **BILL AMENDED:**

SUBJECT: Technology Credit; Sale of Tobacco.

FIRST AUTHOR: Rep. Hasler **BILL STATUS:** As Introduced
FIRST SPONSOR:

FUNDS AFFECTED: X **GENERAL** **IMPACT:** State
X **DEDICATED**
FEDERAL

Summary of Legislation: The bill creates the Emerging Technology Grant Fund to be administered by the Department of Commerce. The bill appropriates $5,000,000 to the Fund. The bill requires the Intelenet Commission to establish an Internet portal to assist technology oriented entrepreneurs in the development and marketing of technology products and services. The bill also establishes a Technology Commercialization Tax Credit against state tax liability.

The bill provides that a cigarette distributor who has five consecutive years of good credit standing with the state is not required to post a bond as a condition of paying for revenue stamps within 30 days of the purchase date. The bill prohibits a distributor from affixing a tax stamp to a cigarette package containing cigarettes from a tobacco product manufacturer that has not complied with the master settlement agreement. The bill specifies that the Alcohol and Tobacco Commission shall enforce the Cigarette Fair Trade Act. The bill requires the Consumer Protection Division of the Office of the Attorney General to maintain a cigarette listing containing the names of all cigarette distributors that hold a registration certificate and all tobacco product manufacturers that are in compliance with the tobacco settlement. The bill makes it a Class C infraction for a retailer to possess cigarettes without an invoice or other evidence that the cigarettes were purchased from a legitimate distributor or manufacturer, and permits the state to seize undocumented cigarettes.

Effective Date: July 1, 2003.

Explanation of State Expenditures: *Emerging Technology Grant Fund:* The bill establishes this Fund to provide: (1) grants to Indiana companies to compete for federal research and development awards; and (2) matching grants that focus on small technology based companies in industry sectors vital to the state's economic growth. The bill also limits grants to companies that receive federal grant awards. The bill also appropriates $5 M from the state General Fund to the Emerging Technology Grant Fund in FY 2004. The bill requires the 21st Century Research and Technology Fund Board to administer this grant program. This

Board currently receives staffing assistance from the Indiana Department of Commerce (IDOC). The bill requires the Treasurer of State to invest the money in Fund. Money in the Fund is continually appropriated and does not revert to the state General Fund.

Technology Portal: The bill requires the Intelenet Commission to implement through the intelenet system a state of the art technology web portal for technology oriented entrepreneurs. The bill requires the portal to: (1) link all the available technology and entrepreneurial resources in Indiana; (2) have specific information concerning funding sources, technology transfer ideas and competencies, and available workforce resources; (3) list the top technology transfer ideas available from colleges, universities, and businesses for entrepreneurial commercialization in Indiana; (4) direct users to local economic development portals and chat rooms oriented toward technology oriented entrepreneurs; and (5) assist in matching intellectual capital with workplace opportunities. The bill requires the Department of Workforce Development and the IDOC to assist the Commission as necessary to implement the technology portal. The Commission may contract with any Indiana college or university with a degree program in entrepreneurship or other relevant resources to assist in implementing the technology portal. The additional administrative demands for the Intelenet Commission presumably could be absorbed given their existing budget and resources. The Commission currently has a staff of 44.

Indiana Department of Commerce (IDOC): The Technology Commercialization Cost Tax Credit and the Emerging Technology Grant Program established by the bill would create additional administrative demands for the IDOC. The IDOC is responsible for determining eligibility of taxpayers for the Commercialization Cost Tax Credit. IDOC must make determinations relating to (1) the type of investment in commercialization costs and (2) that commercialization costs equal at least $250,000 in the first year and $2 M over the four years of the tax credit. Under the bill, the existing 21st Century Research and Technology Fund Board is given the responsibility for administering Emerging Technology Grant Program. The IDOC currently provides staffing for the Board. The additional administrative responsibilities given the IDOC under the bill presumably could be absorbed given their existing budgets and resources. The December 7, 2002, state staffing table indicates that the IDOC has 52 vacant full-time positions, including regional office positions.

Department of State Revenue (DOR): The DOR would incur some administrative expenses relating to the revision of tax forms, instructions, and computer programs to incorporate the tax credits established under this bill. Under claw back provisions of the bill, the DOR also would have to oversee both disallowing credit claims and seeking repayment of credit amounts by taxpayers who fail to remain eligible for the Commercialization Cost Tax Credit. These expenses presumably could be absorbed given the DOR's existing budget and resources.

Attorney General's Office: The bill requires the Attorney General to maintain a listing of the cigarette distributors in the state that have obtained a registration certificate from the DOR and manufacturer that are either participants in the Master Settlement Agreement or make deposits into a qualified escrow account. The Attorney General would be required to update the listing annually and would be required to make the listing public by providing a paper document and posting the list on the Access Indiana website. It is estimated that the Office could absorb any costs associated with this provision using existing staff and resources. The Attorney General's Tobacco Litigation Division consists of two attorneys and a paralegal. The Division is budgeted approximately $200,000 each year.

Explanation of State Revenues: *Technology Commercialization Tax Credit:* The bill establishes a credit against the Adjusted Gross Income (AGI) Tax, Financial Institutions Tax, or Insurance Premiums Tax liability for qualified technology commercialization costs incurred on or after January 1, 2004. The amount of credits that could potentially be claimed by taxpayers is indeterminable. The net revenue impact depends on the extent that collections from employment or other investment attributable to creditable commercialization activities is less than or exceeds the amount of credits claimed by taxpayers. However, if the commercialization activities would have occurred in the absence of the tax credit, the net impact would be the total credits claimed by taxpayers.

The bill provides for a nonrefundable tax credit for costs relating to investment in machinery and equipment and obtaining rights to use or the use of technology, including fees related to patents, copyrights, and licenses. A taxpayer may receive credits for commercialization costs incurred in four taxable years at one business location. (Taxpayers may qualify for an additional four years of tax credits for costs at the same business location.) The credit amount in any taxable year is equal to 15% of money invested in commercialization costs for one business location. However, the credit amount may not exceed 50% of the taxpayer's tax liability in a taxable year after application of all other tax credits.

The tax credit may be applied to the taxpayer's tax liability or distributed to shareholders, partners, or members if the taxpayer is a pass through entity, over five taxable years beginning in the taxable year after the year in which IDOC certification was obtained. (A pass through entity is an S-Corporation, partnership, trust, limited liability company, or limited liability partnership.) The taxpayer may carry forward any unused credit amount from a taxable year for a maximum of 21 subsequent taxable years. The amount the taxpayer may apply in a taxable year excludes any part of the credit carried forward from a prior taxable year. The taxpayer is not eligible to carry back any unused credit. For pass through entities, the credit may be claimed by shareholders, partners, or members in proportion to their distributive income from the pass through entity. The tax credit is not available in a taxable year in which machinery and equipment is not in regular service in Indiana or for an investment for which another research and development tax credit is applied.

Revenue from the AGI Tax on corporations, the Financial Institutions Tax, and the Insurance Premiums Tax is distributed to the state General Fund. Eighty-six percent of the revenue from the AGI Tax on individuals is deposited in the state General Fund, and 14% of this revenue is deposited in the Property Tax Replacement Fund. Since the credit is effective beginning in tax year 2004, the fiscal impact would begin in FY 2005.

Eligible Taxpayer: Taxpayer eligibility is determined by the Indiana Department of Commerce. Eligible taxpayers must incur commercialization costs for a trade or business the taxpayer conducts. The costs must include the purchase or lease of machinery and equipment placed in and maintained in service in Indiana. The machinery and equipment must be used in relation to technology production or to produce resources essential to technology production. The commercialization costs must be equal to at least $250,000 in the first year of the credit, and $2 M for the four-year duration of the credit. The bill contains claw back provisions for taxpayers that do not meet these monetary investment requirements. The bill also permits a taxpayer certified for credits to sell the credits to another taxpayer for use in that taxable year or future taxable years. The credits must be sold for at least 75% of their value, and the purchaser must apply them in the same manner and against the same taxes as the taxpayer certified for the credits.

Penalty Provision: A cigarette retailer commits a Class C infraction if the retailer is not able to produce evidence that the retailer obtained the cigarettes from a licensed distributor or from a tobacco product manufacturer that is either a participant in the Master Settlement Agreement or pays into a qualified escrow account. If additional court cases occur, revenue to the state General Fund may increase if infraction judgments and court fees are collected. The maximum judgment for a Class C infraction is $500 which is deposited in the state General Fund. If court actions are filed and a judgment is entered, a court fee of $70 would be assessed. 70% of the court fee would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

Explanation of Local Expenditures:

Explanation of Local Revenues: *Penalty Provision:* If cigarette retailers are found to have obtained cigarettes from unauthorized distributors more court cases could occur. If additional court actions are filed and a judgment is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the $70 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A $3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A $2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Department of State Revenue, Indiana Department of Commerce, 21st Century Research and Technology Fund Board, Intelenet Commission, Department of Workforce Development; Attorney General's Office; Alcohol and Tobacco Commission.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Clem Bello, Intelenet Commission, (317) 233-8995; National Association of Attorneys General; Jennifer Thuma, Legislative Liaison, Attorney General's Office, 233-6143.

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